

DETAILED ACTION

1. This is the final Office action based on the 10/523649 application filed on July 29, 2005.
2. Claims 1-33 are pending and have been fully considered.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 15 and 27 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims attempt to define the subject matter in terms of the result to be achieved. The claims fail to define the technical feature of the ester produced from the fatty acid composition. The ester produced could be any ester produced from the different fatty acids in the composition claimed and would include known esters.

In response applicants argued that it is not required to provide the ester produced other than to define such ester. This is not deemed to be persuasive due to claims 15 and 27 having broader limitations than the disclosure of esters in applicant's specification since no alcohol component is defined in the claims.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over KRULL et al. (US 2002/0095857).

a. KRULL et al. discloses low-temperature stabilized additives for fuel. The composition comprises tall oil fatty acid compositions comprising a mixture of saturated and unsaturated fatty acids and a sulfur content of up to 0.05 wt%. The proportion of saturated fatty acids is preferably less than 10 wt% and at least 90 wt% of the constituents consist of unsaturated fatty acids (paragraphs 0017-0026). Various examples are disclosed by KRULL et al. which have a cloud point of between -27 and -37 degrees Celsius (Table 2). For example, the composition of the tall oil fatty acid A1 comprises 30% of oleic acid (=C18:1), 60% of linoleic acid (=C18:2) and other polyunsaturated fatty acids and 4% of saturated fatty acids. Krull discloses in paragraphs 0028-0031, various fatty acids, for example linolenic acid (C18:3) comprising 1-40% by weight. The mixtures can be used alone or also together with other additives, for example with other pour point depressants or dewaxing auxiliaries, with corrosion inhibitors, antioxidants, sludge inhibitors, dehazers, conductivity improvers, lubricity additives and additives for lowering the cloud point. They are furthermore successfully employed together with additive packages which comprise, inter alia, known ash-free dispersion additives, detergents, antifoams and corrosion inhibitors. The additives according to KRULL et al. are preferably used in middle

distillates which contain 0.05% by weight or less of sulfur, particularly preferably less than 350 ppm of sulfur, in particular less than 200 ppm of sulfur and in special cases less than 50 ppm of sulfur.

The examiner is of the position that the composition disclosed in the prior art clearly meet the limitations of the claimed composition when KRULL et al. discloses various saturated and unsaturated fatty acids.

Response to Arguments

1. Applicant's arguments filed January 11, 2010 have been fully considered but they are not persuasive.

a. Applicant argued claim 1 is patentable over Krull at least by the required "fatty acid composition comprising less than 3% saturated fatty acids" and/or more than 10% C18:3 fatty acids. Examiner disagrees. Krull discloses in paragraph 0014 that the proportion of saturated fatty acids is from 1 to 99 % by weight. In the claims, the saturated fatty acid component A1) may comprise from 1 to less than 20% by weight which includes saturated fatty acids in amounts of less than 3 %. Krull has met the limitation of claim 1 for saturated fatty acid content. Fatty acid constituent A2) may contain one or more double bonds and may be present in the fatty acid composition in an amount of up to 99% by weight. In applicant's dependent claim 3, the fatty acid composition of claim 1 may be derived from tall oil. Krull discloses that tall oil fatty acid may be used for constituent A2). Thus the claimed fatty acid composition appears to be taught since Tall oil fatty acid contains rosins, sterols, fatty acids (mainly palmitic acid,

oleic acid, and linoleic acid), fatty alcohols, and other alkyl hydrocarbon derivatives.

- b. Applicant argued Krull does not disclose C18:3 fatty acids. Examiner disagrees. Krull discloses in paragraphs 0028-0031, various fatty acids, for example linolenic acid (C18:3) comprising 1-40% by weight.
- c. A reference is good not only for what it teaches but also for what one of ordinary skill might reasonably infer from the teachings. *In re Opprecht* 12 USPQ 2d 1235, 1236 (CAFC 1989); *In re Bode* USPQ 12; *In re Lamberti* 192 USPQ 278; *In re Bozek* 163 USPQ 545,549 (CCPA 1969); *In re Van Mater* 144 USPQ 421; *In re Jacoby* 135 USPQ 317; *In re LeGrice* 133 USPQ 365; *In re Preda* 159 USPQ 342 (CCPA 1968). In addition, "A reference can be used for all it's realistically teachings and is not limited to the disclosure in its preferred embodiments" See *In re Van Marter*, 144 USPQ 421.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LATOSHA HINES whose telephone number is 571-270-5551. The examiner can normally be reached on Monday thru Thursday from 8 a.m. to 5 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Marcheschi can be reached on 571-272-1374. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/LATOSHA HINES/
Examiner, Art Unit 1797

/Ellen M McAvoy/
Primary Examiner, Art Unit 1797